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PRE-APPEAL BRIEF REQUEST FOR REVIEW

Docket Number (Optional)

MSL-1

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on September 13, 2010Signature Typed or printed name Ira S. Dorman

Application Number

09/980,955

Filed

December 4, 2001

First Named Inventor

MARC IVOR JOHN BEALE

Art Unit

2629

Examiner

Leonid Shapiro

Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.

This request is being filed with a notice of appeal.

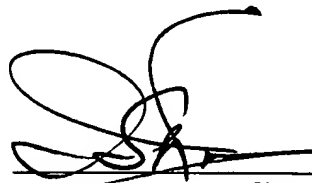
The review is requested for the reason(s) stated on the attached sheet(s).

Note: No more than five (5) pages may be provided.

I am the

☐ applicant/inventor.☐ assignee of record of the entire interest.
See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed.
(Form PTO/SB/96)☒ attorney or agent of record.
Registration number 24,469☐ attorney or agent acting under 37 CFR 1.34.

Registration number if acting under 37 CFR 1.34 _____



Signature

Ira S. Dorman

Typed or printed name

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September 13, 2010

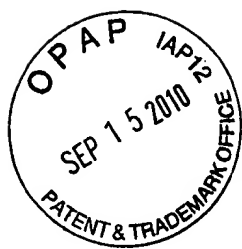
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NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required, see below*.

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

MSL-1

PATENT APPLICATION

MARC IVOR JOHN BEALE

Application No. 09/980,955

Examiner Leonid Shapiro

Filed: December 4, 2001

Art Unit: 2629

COMMUNICATION SYSTEM AND METHOD

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APPLICANT'S REASONS FOR REQUEST FOR REVIEW

In the most recent Office Action, mailed June 14, 2010, all pending claims (apart from those that have been withdrawn from consideration) are again rejected as having been obvious to one of ordinary skill in the art over patent No. 5,745,717, to Vayda et al., in view of patent No. 5,808,567, to McCloud, taken in further view of patent No. 6,545,669, to Kinawi et al., as to Claims 11, 13 and 30. It is believed that those rejections are clearly in error.

In his Response Accompanying RCE, mailed April 22, 2010, Applicant had already submitted that the foregoing rejections were based upon a misreading and misapplication of the prior art. Approximately five pages of remarks were devoted to explanation of Applicant's position.

The Examiner's "Response to Arguments," set forth on pages 6 and 7 of the outstanding Office Action, makes it clear that the Examiner does not refute Applicant's characterizations of the fair teachings of the references, and that he tacitly acknowledges that his position had, indeed, been based upon a misreading thereof. The Examiner merely reiterates, and effectively adopts, Applicant's factual presentation.¹

In deeming Applicant's arguments "nonpersuasive," the Examiner now substitutes a mischaracterization of those arguments for his prior misreading of the art. The Examiner's position devolves entirely to one of reliance upon the cited cases of *In re Keller* and *In re Merck & Co.* for the principle that "... one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references,"² having characterized Applicant's position as being predicated upon "arguments against the references individually." That is a clear misrepresentation of Applicant's position.

The Examiner quotes remarks from Applicant's April 22, 2010 Response Accompanying RCE, which state in essence that Vayda et al. select symbols as a result of movement in a *radial* direction, and that McCloud requires movement in a direction *perpendicular* to the plane of the communication region. These statements obviously do not attack the references individually, in the sense explicit in the cited cases. Rather, they express the irrefutable fact that *neither* reference teaches or suggests a quintessential feature that is common to all of Applicant's claims; i.e., that "a desired symbol can be selected by detecting movement ... along a predetermined bearing ... [that is] ... *parallel* to a direction of the desired symbol relative to a central region ... (emphasis added).

¹ If the Examiner does refute Applicant's characterizations of the references, however, that would represent further error for consideration.

² It should be noted that Applicant does not refute the *principle*.

If neither reference discloses movement along a parallel bearing, as is the case, then it is perfectly obvious that the combination could not possibly do so.

As summarized on page 6 of Applicant's April 22nd Response: "There is simply no disclosure in Vayda or McCloud, *taken alone or together* (emphasis added), of either:

movement along a bearing which is parallel to a direction of the desired symbol relative to a central region of the communication region; or

symbol selection independent of the location within the communication region at which movement along the bearing commences."

As to the feature referred to in the second subparagraph above, the Examiner quotes, in his "Response to Arguments," Applicant's assertion that "... Vayda does require movement from a focus position" (i.e., that independence of movement commencement is not taught by Vayda). The Examiner nevertheless effectively dismisses this essential distinction by again citing *In re Keller* and *In re Merck & Co.*, repeating the same patently inapplicable principle regarding individual attacks on references used in combination. Here too, therefore, since neither reference teaches or suggests the claim requirement for independence from movement commencement, as defined, it is obvious that the combination thereof could not possibly do so.

In the body of the Action the Examiner again cites lines 41-45 in column 4 of Vayda et al. as disclosing this limitation. It is evident however that no such disclosure is present at that location, nor is it to be found elsewhere, in any reference.

It is manifest that Applicant has not attacked the references individually. And consequently, it is manifest that, in asserting to the contrary and in rejecting the claims on that basis, the Examiner has committed fundamental errors.

Withdrawal of all rejections set forth in the outstanding Office Action is clearly in order, and is earnestly solicited.

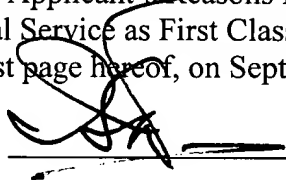
Respectfully submitted,
MARC IVOR JOHN BEALE

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CERTIFICATE OF MAILING

I, IRA S. DORMAN, hereby certify that this Applicant's ~~Reasons~~ Reasons for Request for Review, is being deposited with the United States Postal Service as First Class Mail, postage prepaid, in an envelope addressed as set forth on the first page hereof, on September 13, 2010.



cc: Derek C. Jackson, Esq.
(Ref. No. P0434)